

'Unwritten policy' gives non-impaired killer drivers an out

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All summer long, people have been asking me when Haluk Kandas will be arrested for the fiery collision that incinerated a family on their way to church in Scottsdale.

For 11 weeks, they have been asking and for 11 weeks I've been giving the same answer: Don't hold your breath.

In Maricopa County, you can kill someone with your car and get away with it as long as police can't prove you were drunk or high. At least, that's how it's always seemed to me.

And to Cherise Graham. Prosecutors informed her this year that they wouldn't be going after the drug addict who ran a red light in Mesa, killing her fiancé.

And to Andrea Malatesta. Prosecutors have spent all summer shopping for a judge who will agree to a ridiculously soft plea deal for the driver who blasted through a red light in Scottsdale, leaving Malatesta with life-altering injuries.

Turns out we were right.

Maricopa County Attorney Andrew Thomas acknowledged Wednesday that his office has an "unwritten policy" on when prosecutors will go after a driver who kills or maims someone. "When there's evidence of impairment, the standard has been to charge," he said. "When there isn't evidence of impairment, we haven't."

That's good news for Kandas. Investigators found no evidence of impairment after he rammed the Walls family's minivan while exiting Loop 101 on June 16. I'm guessing that's why he's still walking free.

And why prosecutors are pushing such a sweet deal for the driver who left Malatesta with a broken body and a brain injury. She and two others were injured in May 2005 when Tamra Leah Chastain ran a red light at Scottsdale Road and Goldwater Boulevard, going 10 mph over the limit, according to police. Chastain, who had methamphetamine in her system, did poorly on field sobriety tests and told police she'd been "way to drunk to drive" earlier. But police waited five hours to take blood. By then there was no alcohol in her system.

A grand jury insisted on charging her with five felonies and misdemeanor DUI but prosecutors quickly offered to drop all felony charges. Two judges have turned down that deal, with one calling it "a manifest injustice." Prosecutors plan to take it to a third judge on Sept. 11.

Or they did. After reading an account of the Chastain case on Wednesday, Thomas told me he's going to revisit the case. "I'm confident you will see our office taking a different posture," he said.

In fact, Thomas told me he's reconsidering the entire no impairment-no charges policy. He said he began to question it several months ago, after hearing about Cherise Graham's fiancé, which makes you wonder why his office has been shopping the Chastain deal all summer, but I digress.

Graham's fiancé, Larry Warner, was killed instantly in December 2004 when a 22-year-old drug addict on probation gunned it and ran a red light at Gilbert Road and University Drive in Mesa, according to police. The driver had traces of three illegal drugs in his system and police suspected he was impaired. But in March, prosecutors took a pass.

Thomas said he plans to reconsider that one, too. Too often, he said, his office has rejected such cases because they're harder to win. I can see why. It's a slam dunk, after all, to prove that someone's been criminally reckless or negligent if you can prove they're drunk. But if not?

"The assumption," he said, "is that juries will not convict drivers who are specifically inattentive or negligent."

Well, let's find out.